

Appl. No. 10/026,123

R sponse dated February 4, 2004

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**Remarks**

Claims 1-23 are pending in the instant application. In the Office Action mailed November 5, 2003, the Examiner rejects claims 1-23. Based on the amendments and remarks made herein, Applicants respectfully request that the rejections be withdrawn and that the application be passed to allowance.

**1. Paragraph 2 of the Office Action Mailed November 5, 2003: Rejection Under 35 U.S.C. §103(a)**

In the Office Action mailed November 5, 2003, the Examiner rejects claims 1-3, 5, 7, 11-14 and 20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,779,831 issued to Schmitz (hereinafter "the Schmitz patent") in view of U.S. Patent No. 6,210,388 issued to Widlund et al. (hereinafter "the Widlund patent"). Applicants respectfully traverse the rejection.

With regard to claims 1, 11 and 12, the Examiner believes the Schmitz patent discloses a method of making an undergarment having refastenable side seams from a substantially two-dimensional web. The Examiner believes the Schmitz patent discloses a web having two longitudinal sides and a first lateral edge or two lateral sides and a first longitudinal edge. The Examiner also believes the Schmitz patent discloses the steps of transporting the web in a processing direction and cutting the web along a second side or edge to form a two-dimensional pre-form that includes the first and the second lateral edges and the two longitudinal edges. The Examiner believes the Schmitz patent discloses each longitudinal edge has two waist sections and a crotch section located intermediate the waist sections. The Examiner also believes the Schmitz patent discloses a sealing or fastening surface located adjacent and inboard on the waist sections. The Examiner further believes the Schmitz patent discloses a step of gripping the pre-form adjacent each waist section with a gripping means in four gripping areas where each gripping area is located near a respective fastening surface. The Examiner believes the Schmitz patent discloses a step of jointly rotating at least the gripping means which hold the gripping areas in the region of one of the lateral edges around at least one hinging axis extending substantially parallel to the lateral edges of the pre-form to place the first lateral edge generally parallel and opposite to the second lateral edge. The Examiner also believes the Schmitz patent discloses superimposing the sealing or fastening surfaces in a securing means in order to form the undergarment and releasing the undergarment from the gripping means. The Examiner believes the Schmitz patent also discloses using hook and loop material as mechanical fasteners as an alternative to overlapping seams. The Examiner acknowledges that the Schmitz patent does not disclose preconditioning the web to include at least four refastening surfaces. The Examiner believes however that the Widlund patent discloses preconditioning a web to include hook and loop refastening surfaces before cutting.

Appl. No. 10/026,123

Response dated February 4, 2004

The Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to precondition the web to include hook and loop refastening surfaces because the Examiner believes it is well known in the art to add fasteners to the web before cutting the web into individual diapers.

With respect to claims 2, 3, 13 and 14, the Examiner believes the Schmitz patent discloses the step of forming the web by combining a liquid-impervious backsheet, an absorbent core and a liquid-pervious topsheet, such that the undergarment is an absorbent article. The Examiner also believes the Schmitz patent discloses the pre-form including an exterior surface and a body-contacting surface opposite the exterior surface and the waist sections defining a front waist section and a back waist section. With respect to claim 5, the Examiner believes the Widlund patent discloses two of the refastening surfaces being located on the body-contacting surface of the front waist section and two of the refastening surfaces being located on the exterior surface of the back waist section. The Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to place two refastening surfaces on the body-contacting surface of the front waist section and two refastening surfaces on the exterior surface of the back waist section because the Examiner believes it is well known and conventional to place the refastening surfaces in a number of configurations along the waist section. With respect to claims 7 and 20, the Examiner believes the Schmitz patent discloses that prior to cutting of the web, portions of the web which form adjacent pre-forms are joined to each other by the back waist section of one pre-form and the front waist section of the adjacent pre-form.

Independent claim 1 of the present invention is directed to a method of making an undergarment having refastenable side seams from a substantially two-dimensional web. The web has two longitudinal sides and a first lateral edge extending perpendicularly to the longitudinal sides. The method includes a step of preconditioning the web to include at least four refastening surfaces followed by a step of transporting the web in a processing direction. The method also includes a step of cutting the web along a second lateral edge to form a two-dimensional pre-form that includes the first and the second lateral edges and the two longitudinal edges. Each longitudinal edge has two waist sections and a crotch section located intermediate the waist sections. The refastening surfaces are located adjacent and inboard on the waist sections. The method further includes a step of gripping the pre-form adjacent each waist section with a gripping means in four gripping areas where each gripping area is located near a respective refastening surface. Additionally, the method includes a step of jointly rotating at least the gripping means which hold the gripping areas in the region of one of the lateral edges around at least one hinging axis extending substantially parallel to the lateral edges of the pre-form to place the first lateral edge generally parallel and opposite to the second lateral edge. The

Appl. No. 10/028,123

Response dated February 4, 2004

method includes the steps of superimposing the refastening surfaces in a contacting relationship and joining the superimposed refastening surfaces in a securing means, thus forming the undergarment. The method further includes the step of releasing the undergarment from the gripping means. Independent claim 11 of the present invention is directed to a similar method as that described in claim 1 except that the "cutting" step entails cutting the web along a second longitudinal edge to form a two-dimensional pre-form that includes the first and the second longitudinal edges and the two lateral edges. Likewise, independent claim 12 of the present invention is directed to a similar method as that described in claim 1 except that the "preconditioning" step entails the web including at least two areas of hook material and two areas of mating loop material.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. The Examiner's rejection of claims 1-3, 5, 7, 11-14 and 20 as unpatentable over the Schmitz patent in view of the Widlund patent is improper because there is no suggestion or motivation in the references to combine their teachings.

The Schmitz patent is directed to a method of making an undergarment having side seams from a substantially two-dimensional web. (See Col. 1, lines 7-9 of the Schmitz patent). The Widlund patent is directed to a method of manufacturing an absorbent article in the form of a pants-type diaper beginning with a flat diaper blank. (See Col. 1, lines 6-8 of the Widlund patent). The Widlund patent discloses a "web moving through the guide means 28 is thus comprised of a string of mutually joined pants-type diapers which after exiting from the guide means 28 are separated from one another by means of an appropriate cutting tool 29". (See Col. 4, lines 34-37 of the Widlund patent). Hence, with the method of the Widlund patent, the web includes a string of mutually joined pants-type diapers that are then separated from each other. Conversely, the methods of the Schmitz patent involve a continuous web that is transported in a substantially flattened state and that is cut transversely to form individual blanks prior to undergarments having a "pant-like" configuration being formed. (See Col. 7, lines 2-6 of the Schmitz patent). The methods described in the Schmitz patent and the Widlund patent are not compatible with each other and therefore, the method of the Widlund patent cannot be integrated with the method of the Schmitz patent.

The Examiner has provided no basis for motivation or suggestion in the references to combine their teachings and the Examiner does not state how one of skill in the art would know to integrate

Appl. No. 10/026,123

Response dated February 4, 2004

steps of incongruous methods. The Examiner has merely selectively picked one feature of the Widlund patent and stated that one of ordinary skill in the art would know to add fasteners to the web before cutting the web into individual diapers. Consequently, it appears that the Examiner is relying on impermissible hindsight facilitated by the present application to contend that the present invention is obvious. As set forth in MPEP §2143, "the teaching or suggestion to make the claimed combination ... must ... be found in the prior art, not in the applicant's disclosure." For at least these reasons, Applicants respectfully submit that claims 1, 11 and 12 are patentable over the Schmitz patent in view of the Widlund patent and that the rejection should be withdrawn.

Likewise, Applicants respectfully submit that claims 2, 3, 5, 7, 13, 14 and 20, which depend from independent claims 1 and 12, are patentable over the Schmitz patent in view of the Widlund patent for at least the reasons stated above.

**2. Paragraph 3 of the Office Action Mailed November 5, 2003: Rejection Under 35 U.S.C. §103(a)**

In the Office Action mailed November 5, 2003, the Examiner rejects claims 4, 8 and 15-18 under 35 U.S.C. §103(a) as being unpatentable over the Schmitz patent in view of the Widlund patent as applied to claims 3 and 14 and further in view of International Application Number PCT/US99/29704 having inventors, Fletcher et al. (hereinafter "the Fletcher application"). Applicants respectfully traverse the rejection.

With respect to claim 4, the Examiner believes the Schmitz patent in view of the Widlund patent discloses the limitations of claim 3, but the Examiner acknowledges that the combination does not disclose two of the refastening surfaces being located on the exterior surface of the front waist section and two of the refastening surfaces being located on the body-contacting surface of the back waist section. The Examiner believes the Fletcher application discloses a configuration of two refastening surfaces being located on the exterior surface of the front waist section and two refastening surfaces being located on the body-contacting surface of the back waist section. The Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to place refastening surfaces in a number of configurations along the waist section, including the claimed placement.

With respect to claim 8, the Examiner believes the Widlund patent discloses "a step of folding inward a portion of the longitudinal edge of a waist section prior to jointly rotating the gripping means". The Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to fold inward a portion of the longitudinal edge of the front waist section "prior to jointly rotating the gripping means so that the front and rear side parts thereof are placed edge-to-edge, and the coacting parts are pressed firmly against one another."

Appl. No. 10/026,123

Response dated February 4, 2004

With respect to claims 15 and 16, the Examiner believes the Fletcher application discloses mating hook material located on the exterior surface of the front waist section, and the areas of loop material located on the body-contacting surface of the back waist section. The Examiner also believes the Fletcher application discloses mating loop material located on the exterior surface of the front waist section and areas of hook material located on the body-contacting surface of the back waist section. The Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to place the hook and loop materials on either the exterior front waist section or the body-contacting back waist section since it is well known and conventional to place the refastening surfaces in a number of configurations along the waist section as alternative and equivalent embodiments.

With respect to claims 17 and 18, the Examiner believes the Widlund patent discloses the configuration of fasteners located on the body-contacting surface of the front waist section and fasteners located on the exterior surface of the back waist section. The Examiner further believes that the Fletcher application discloses locating the hook material and loop material irrespective of the location of the fasteners. The Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to place the hook and loop materials on either the body-contacting front waist section or the exterior back waist section since it is well known and conventional to place the refastening surfaces in a number of configurations along the waist section as alternative and equivalent embodiments.

Claim 4 depends from claim 3, which depends from independent claim 1 and claim 8 depends from claim 4. Claims 15-18 depend from claim 14, which depends from independent claim 12. Claims 4, 8 and 15-18 are patentable over the Schmitz patent in view of the Widlund patent and further in view of the Fletcher application for at least the reasons provided above with respect to independent claims 1 and 12. Additionally, the Examiner does not explain the motivation or suggestion in the Fletcher application that would lead one of skill in the art to combine its disclosure with the disclosure of the Schmitz patent. For example, with respect to claim 8, the Examiner expresses her belief that it would have been obvious "to fold inward a portion of the longitudinal edge of the front waist section ... prior to jointly rotating the gripping means", but neither the Widlund patent nor the Fletcher application describe a method of making absorbent articles that involves jointly rotating a gripping means. As with the Widlund patent, the Examiner is relying on impermissible hindsight facilitated by the present application to contend that the combination is obvious. For at least these reasons, Applicants respectfully submit that claims 4, 8 and 15-18 are patentable over the Schmitz patent in view of the Widlund patent and further in view of the Fletcher application and request that the rejection be withdrawn.

Appl. No. 10/026,123

Response dated February 4, 2004

**3. Paragraph 4 of the Office Action Mailed November 5, 2003: Rejection Under 35 U.S.C. §103(a)**

In the Office Action mailed November 5, 2003, the Examiner rejects claims 6 and 19 under 35 U.S.C. §103(a) as being unpatentable over the Schmitz patent in view of the Widlund patent as applied to claims 3 and 14 and further in view of U.S. Patent No. 5,399,219 issued to Roessler et al. (hereinafter "the Roessler patent"). Applicants respectfully traverse the rejection.

The Examiner believes the Schmitz patent and the Widlund patent disclose all of the limitations of claim 3, but the Examiner acknowledges that the combination does not disclose that prior to cutting of the web, portions of the web which form adjacent pre-forms are joined to each other by the back waist section of one pre-form and the back waist section of the adjacent pre-form. The Examiner believes that the Roessler patent discloses this design. The Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to design the web to include adjacent pre-forms joined to each other by the back waist section of one pre-form and the back waist section of the adjacent pre-form since this is a well-known and conventional design of a web for making garments.

Claim 6 depends from claim 3, which depends from independent claim 1 and claim 19 depends from claim 14, which depends from independent claim 12. Claims 6 and 19 are patentable over the Schmitz patent in view of the Widlund patent and further in view of the Roessler patent for at least the reasons provided above with respect to independent claims 1 and 12. Additionally, the Examiner does not explain the motivation or suggestion in the Roessler patent that would lead one of skill in the art to combine its disclosure with the disclosure of the Schmitz patent. As with the Widlund patent, the Examiner is relying on impermissible hindsight facilitated by the present application to contend that the combination is obvious. For at least these reasons, Applicants respectfully submit that claims 6 and 19 are patentable over the Schmitz patent in view of the Widlund patent and further in view of the Roessler patent and request that the rejection be withdrawn.

**4. Paragraph 5 of the Office Action Mailed November 5, 2003: Rejection Under 35 U.S.C. §103(a)**

In the Office Action mailed November 5, 2003, the Examiner rejects claims 9, 10 and 21-23 under 35 U.S.C. §103(a) as being unpatentable over the Schmitz patent in view of the Widlund patent as applied to claims 3 and 14 and further in view of GB 2,303,045 issued to Johansson et al. (hereinafter "the Johansson patent"). Applicants respectfully traverse the rejection.

With respect to claims 9, 21 and 22, the Examiner believes the Schmitz patent and the Widlund patent disclose all of the limitations of claim 3, but the Examiner acknowledges that the combination does not disclose two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces located on the body-contacting surface of the back waist section comprising both hook and loop material. Th

Appl. No. 10/026,123

Response dated February 4, 2004

Examiner believes the Johansson patent discloses two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces located on the body-contacting surface of the back waist section comprising both hook and loop material. The Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to place two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces located on the body-contacting surface of the back waist section comprising both hook and loop material to avoid peeling forces and for a simplified manufacturing process.

With respect to claims 10 and 23, the Examiner believes the Widlund patent discloses a step of folding inward toward the exterior surface of the pre-form joined superimposed refastening surfaces and bonding the joined superimposed refastening surfaces to the exterior surface of the pre-form. The Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to fold inward toward the exterior surface of the pre-form a joined superimposed refastening surface and bonding the joined superimposed refastening surface to the exterior surface of the pre-form so that the abutted fasteners are not sticking out of the diaper.

Claim 9 depends from claim 3, which depends from independent claim 1 and claim 10 depends from claim 9. Claims 21 and 22 depend from claim 14, which depends from independent claim 12 and claim 23 depends from claim 22. Claims 9, 10 and 21-23 are patentable over the Schmitz patent in view of the Widlund patent and further in view of the Johansson patent for at least the reasons provided above with respect to independent claims 1 and 12. Additionally, the Examiner does not explain the motivation or suggestion in the Johansson patent that would lead one of skill in the art to combine its disclosure with the disclosure of the Schmitz patent. As with the Widlund patent, the Examiner is relying on impermissible hindsight facilitated by the present application to contend that the combination is obvious. For at least these reasons, Applicants respectfully submit that claims 9, 10 and 21-23 are patentable over the Schmitz patent in view of the Widlund patent and further in view of the Johansson patent and request that the rejection be withdrawn.

In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 1-23. If any additional information is required, the Examiner is invited to contact the undersigned at (920) 721-2433.

Appl. N . 10/026,123

Response dated February 4, 2004

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account.

Respectfully submitted,

CHRISTOPHER P. OLSON ET AL.

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## CERTIFICATE OF FACSIMILE TRANSMISSION

I, Mary L. Roberts, hereby certify that on February 4, 2004, this document is being transmitted via facsimile to the Commissioner for Patents via facsimile number 703-872-9306.

By: Mary L. Roberts  
Mary L. Roberts